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MAY 05 2008

OFFICE OF PETITIONS

In re Application of :
Viavant et al. : DECISION ON
Application No. 09/945,160 : PETITION
Filed: August 31, 2001 :
Atty Docket No. 50277-1747 :

This is a decision on the PETITION UNDER 37 CFR 1.183 REQUESTING
WAIVER OF THE SIGNATURE OF UNAVAILABLE INVENTORS filed January
3, 2008.

The petition under 37 CFR 1.183 is **DISMISSED**.

Applicant is given TWO MONTHS from the mailing date of this
decision to reply. Any reply should be entitled "Request for
Reconsideration of Petition Under 37 CFR 1.183." This 2-month
period is governed by 37 CFR 1.181(f) and is not extendable
under 37 CFR 1.136.

The above-identified application was filed on August 31, 2001.
A 37 CFR 1.63 declaration signed by all of the inventors
(Viavant, Farooq, Marfatia and Shukla) was filed on January 9,
2002. On January 3, 2008, applicant filed a DECLARATION UNDER
37 CFR 1.131 OF STEVEN VIAVANT. The Office did not receive any
1.131 declarations from any of the other joint inventors.

Applicant has filed the instant petition to have the 37 CFR
1.131 declaration accepted as signed by inventor Viavant.
Petitioner requests waiver of the signature requirement of 37
CFR 1.131 in view of the fact that the three inventors who did

not sign the Declaration have not been employed by the assignee of the present application for several years and that their whereabouts are unknown.

37 CFR 1.131 states, in pertinent part:

When any claim of an application or a patent under reexamination is rejected, the inventor of the subject matter of the rejected claim, the owner of the patent under reexamination, or the party qualified under §§ 1.42, 1.43, or 1.47, may submit an appropriate oath or declaration to establish invention of the subject matter of the rejected claim prior to the effective date of the reference or activity on which the rejection is based.

In addition, the Manual of Patent Examining Procedure states that "an application or declaration by less than all named inventors of an application is accepted where it is shown that less than all named inventors of an application invented the subject matter of the claim or claims under rejection."

Here, there has not been a party qualified under 37 CFR 1.42, 1.43, or 1.47. In addition, applicant does not contend that less than all of the named inventors of the application invented the subject matter of the claims under rejection. Accordingly, the proper parties to sign the 37 CFR 1.131 declaration include all of the joint inventors.

In order for a petition under 37 CFR 1.183 to be granted to waive the requirement that all of the joint inventors sign the § 1.131 declaration, petitioner must demonstrate that this is an extraordinary situation where justice requires waiver of the rules.

On instant petition, petitioner has not shown that diligent efforts have been undertaken to reach or find the nonsigning inventors to have them sign the § 1.131 declaration. Petitioner has not demonstrated that this is an extraordinary situation, warranting waiver of the rules.

The efforts set forth have been considered, but not found to support a conclusion that a diligent effort to reach or find the inventors was undertaken. Petitioner merely indicates that they checked with the assignee and determined that the inventors were no longer employed by the assignee. Further, the assignee did

not know their whereabouts. There is no indication in the evidence presented that reasonable efforts were undertaken to determine an address for the inventors to which mail would be deliverable. Petitioner does not indicate whether they utilized resources such as forwarding services of their postal service or such as the Internet to locate the inventors. If further attempts to obtain a forwarding address or to locate the non-signing inventor by other means such as through a working E-mail address, directory assistance, or the Internet continue to fail, then applicants will have provided the necessary proof required that the inventors cannot be reached. Details of the efforts to reach or locate the non-signing inventors should be set forth in an affidavit or declaration of facts by a person with first hand knowledge of the details. Applicants should also submit documentary evidence such as the results of any E-mail or Internet searches. The Internet searches must be reasonably calculated to ascertain a current address at which to reach the inventors and attempts must be undertaken to reach the inventors at any reasonable address ascertained.

The \$400 fee required for consideration of this petition under § 1.183 has been charged to Deposit Account No. 50-1302, as authorized.

Technology Center AU 2151 has been advised of this decision. The application is, thereby, forwarded to the Technology Center for further action by the examiner in light of this decision refusing waiver of the requirement that all of the inventors sign the 1.131 declaration.

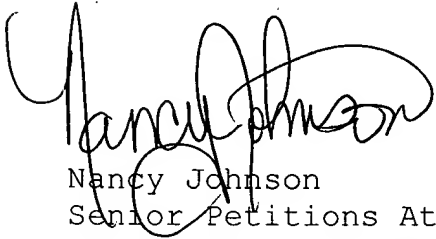
Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: (571) 273-8300
 Attn: Office of Petitions
 ATTN: NANCY JOHNSON

By hand: Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 2231

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson". The signature is stylized with a large, looping initial "N" and a cursive "Johnson".

Nancy Johnson
Senior Petitions Attorney
Office of Petitions